

FOIA/PA REQUEST
CASE # 2016-0219-F
DATE RCVD 8 JAN 2016
DATE DUE 8 FEB 2016
RCVD BY NGB-JA OIP

January 8, 2016

Dear Sir or Madam:

This is a Freedom of Information Act request of today's date, i.e., Friday, January 8, 2016. My telephone number is 907-269-5160. My email address is peter.putzier@alaska.gov. My physical address is: Peter Putzier, State of Alaska, Attorney General's Office, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501.

The State of Alaska, Attorney General's Office, seeks documents associated with events at the former Kulis Air National Guard Base located at the Ted Stevens Anchorage International Airport in Anchorage, Alaska.

The following are the State's specific requests for the three month time period starting on **November 28, 2012, and ending March 1, 2013:**

- (1) All documents or other written communications (in whatever form) by or between any United States Air Force employees and Nick Warton, Ned Harshbarger, Shane Durand, Larry Helgeson, or Glenn Hasburgh.
- (2) All letters, memoranda, emails, or other written communications (in whatever form) involving any two or more of the following: Virginia Trezise, Andy Mamrol, Paul Bernheisel, Ed Soto or Gerald Romig.
- (3) All letters, memoranda, emails, or other written communications (in whatever form) authored or received by either Virginia Trezie, Andy Mamrol, Paul Bernheisel, Ed Soto or Gerald Romig relating in any way to the former Kulis Air National Guard base (located at the Ted Stevens Anchorage International Airport, Anchorage, Alaska) or to the associated environmental clean-up work of any kind being conducted at that site.
- (4) Any written documents or communications (in whatever form) containing any of the following tags: Katrina Chambon, Debra Caillouet, Swanson, Paul Ingram, Nina Petrova, Jesse Campbell, Scott Lytle, John Johansen, Lucas Gamble, Nyman, Braman, RSE, LeMay, or Alcan and involving the former Kulis Air National Guard base (located at the Ted Stevens Anchorage International Airport, Anchorage, Alaska) or associated environmental clean-up work of any kind being conducted at that site.
- (5) Meeting minutes, diaries, or notes of any kind taken during any internal meetings or meetings with State of Alaska officials concerning clean-up or environmental work of any kind at the former Kulis Air National Guard Base (located at the Ted Stevens Anchorage International Airport, Anchorage, Alaska).

As to costs, the State requests an estimate of costs if the agency anticipates billing for this FOIA request.

Thank you.

Peter Putzier



NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE
ARLINGTON VA 22204-1373

FOIA Response

MAR 16 2018

Office of Information and Privacy

Chief Jeff Stark
State of Alaska, Attorney General's Office
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Dear Requester:

This letter is in response to your Freedom of Information Act (FOIA) request appeal dated April 26, 2016, appealing the no records response to FOIA case #2016-01219-F. Your appeal was received by our office on April 26, 2016 and assigned case #2016-00123-A.

A new search for records was conducted by the 176th Wing Group and 112 pages were located in response to your request. After a thorough review of these documents, I have determined that portions of them are exempt from disclosure under the FOIA, 5 U.S.C. § 552 (b)(6).

Exemption (b)(6) protects personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Under this exemption, I am withholding names of Department of Defense employees below the grade of General Officer and names, e-mail addresses, and cell phone numbers of third parties.

As new records were located in response to your request and in order to preserve appeal rights to any denial of information, this is being treated as an initial request and has not been forwarded to the appellate authority. Within the records there were 4 pages that contain information that originated from the Department of the Air Force and the Environmental Protection Agency. Those documents have been referred to those agencies for review and direct response to you. Their contact information is:

Regional Freedom of Information Officer
U.S. EPA, Region 10
Office of Ecosystems, Tribal and Public Affairs
1200 6th Avenue ETPA-124
Seattle, WA 98101
(206) 553-8665

Headquarters Air Force/AAII (FOIA)
1000 Air Force Pentagon
Washington, DC 20330-1000
(703) 693-2735
Usaf.pentagon-saf-aa.mbx.haf-foia-workflow@mail.mil

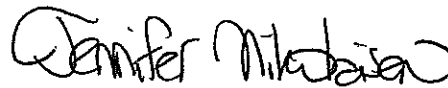
If you are not satisfied with this response you have the right to appeal to the Secretary of the Air Force within 90 days through this office, by writing to the Office of Information and Privacy (NGB/JA-OIP), 111 South George Mason Drive, AH2 Suite 319B, Arlington, VA 22204-1373, or by e-mail, NGB.FOIA@mail.mil. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this response. Your appeal should include copies of your original request and this response, as well as a discussion of the reasons supporting your appeal.

For any further assistance and to discuss any aspect of your request, you have the right to contact the Air Force FOIA Public Liaison Officer, Ms. Anh Trinh by mail at (SAF/CIO A6XA), 1800 Air Force Pentagon, Washington, DC 20330-1800, by e-mail at usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil or by phone at (703) 614-8500.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448 or by facsimile at (202) 741-5769.

This concludes our office's processing of your request. If you have any questions regarding this closure, please contact my office at (844) 573-2939 or by e-mail: NGB.foia@mail.mil.

Sincerely,



Jennifer Nikolaisen
Chief, Office of Information and Privacy
Freedom of Information Act/Privacy Officer

Enclosure

Appeal to NGB-K



THE STATE
of ALASKA
GOVERNOR BILL WALKER

Department of Law

CIVIL DIVISION

1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
Main: 907-269-5100
Fax: 907-276-3697

April 26, 2016

FOIA/PA REQUEST

CASE # 2016-00123-A
DATE RCVD 26 Apr 2016
DATE DUE 24 May 2016
RCVD BY NGB-JA OIP

VIA U.S. CERTIFIED MAIL

Office of Information and Privacy (NGB/JA-OIP)
111 South George Mason Drive, AH2
Arlington, Virginia 22204-1373

Re: Appeal of Denial of FOIA Request, April 11, 2016
#2016-01219-F
AGO No.: AN2015102544

Dear Sir or Madam:

On April 11, 2016, the National Guard Bureau denied a public records request filed by the State of Alaska, Attorney General's Office. The basis for the denial was that records did not exist.

The only other communication we received was that a response was not likely until June 30, 2017 (a 1.5 year search period) because of the "complexity" of the response.¹ The National Guard Bureau made no other efforts to communicate about the status of the response, or the efforts being undertaken, or otherwise to communicate with the State of Alaska as the search for records progressed.

The National Guard Bureau's denial letter fails to specify what efforts were made to find the documents, and therefore is deficient. Ms. Nikolaisen—an experienced FOIA officer who should know better—simply states that a search was conducted by "knowledgeable staff in the 168th Communications Flight" and "failed to locate any documents that would be responsive." In other words, she informed us that someone did something.

¹ A request for documents for five or so federal employees spanning a roughly three month period is hardly a "complex" FOIA request. One can question the good faith of this form letter response.

The National Guard Bureau has to do much better. It has the burden to show that it did not improperly withhold materials.² The National Guard Bureau must show that it performed an “adequate search” and using methods “reasonably calculated to produce documents responsive to the FOIA request.”³ “Reasonableness” must be judged “in a light most favorable to the requestor.”⁴

FOIA case law demands that adequate evidence be presented about the exact files and storage systems searched, and exactly how the search was conducted (manual searches, electronic word searches, and so on).⁵ In short, the National Guard Bureau must show what records were searched, and by whom and through what specific process.⁶

The Air Force Manual implementing FOIA requires that in a response to an appeal from a “no records” determination, the agency must search again or develop a package demonstrating that the “Air Force element systematically tried to find responsive records.”⁷ We certainly agree, but would also contend that same requirement should apply to the initial response.

² See, e.g., *Knittel v. Internal Revenue Serv.*, 795 F.Supp.2d 713, 718 (W.D. Tenn. 2010).

³ *Families for Freedom v. United States Customs & Border Protection*, 837 F.Supp.2d 331, 335 (S.D.N.Y. 2011) (citation omitted).

⁴ *White v. United States Dep’t of Justice*, 840 F.Supp.2d 83, 88 (D.C. Cir. 2012) (citations omitted).

⁵ See, e.g., *Families for Freedom v. United States Customs and Border Protection*, 837 F.Supp.2d 331, 337 (S.D.N.Y. 2011); *White*, 840 F.Supp.2d at 88 (“agency must conduct a good faith, reasonable search of those systems of records likely to possess the requested information”).

⁶ *White*, 840 F.Supp.2d at 88.

⁷ DOD5400.7-R_AFMAN33-302 at ¶ C5.3.1.2.2. The complete guidance is as follows:

If a requestor appeals an Air Force “no records” determination, Air Force elements must search again or verify the adequacy of their first search. The package must include documents that show the Air Force element systematically tried to find responsive records. Tell, for example, what areas or offices were searched and how the search was conducted—manually, by computer, by telephone, and so forth. In the event a requestor sues the Air Force to contest a determination

If we proceed to a lawsuit in federal district court, we intend to introduce evidence about the existence of documents that should have been produced. Enclosed as Exhibit 1 you will find numerous existing documents in our files showing email correspondence that would have been responsive.⁸ The existence of these documents directly undercuts the contention that the National Guard Bureau conducted an adequate search. In theory, the National Guard Bureau's attorney may have failed to issue a legal hold notice, and documents could have been destroyed as part of normal retention practices. If that occurred here, again the National Guard Bureau should simply explain what happened so that we can mutually save the time and expense of further litigation.

We know documents existed, at least at one time. We have produced at least some of those documents (247 pages). It strains credulity to believe that the same federal employees actively and frequently communicating by or with the State of Alaska were not also communicating with each other. So what happened? Where are the emails? That is a fair question, and we expect a reasonable explanation for why the documents have not been produced.

We find Ms. Nikolaisen's short and dismissive responsive to be very disappointing. The State of Alaska knows all about the burdens associated with public records requests. Alaska has its own Public Records Act.⁹ The request from multiple news agencies for Governor Sarah Palin's email records, for example, was one of the more notorious public records request examples. We routinely have to respond within narrow time frames to all sorts of requests for documents. We know that the National Guard Bureau could have been more helpful, and more responsive, but essentially has forced our hand into an administrative appeal.

By this appeal letter we also request a direct dialogue with the FOIA public liaison officer.¹⁰ The Air National Guard website states that if a requestor is "dissatisfied with the response received," we may contact the Air Force FOIA Public Liaison Officer. We

that no responsive records exist, formal affidavits are required to support the adequacy of any searches conducted.

⁸ Because of email size limitations, we have not sent a copy of our Exhibit 1 to those copied with this email. Should either Jennier Nikolaisen or the FOIA Public Liaison Officer want to see a copy of Exhibit 1, please contact me directly by email at peter.putzier@alaska.gov, or call me at 907-269-5204, and we will arrange to send a disk.

⁹ See AS 40.25.100-295.

¹⁰ The FOIA public liaison officer is a position required by federal law. 5 U.S.C. § 552(k)(6).

are indeed dissatisfied, and request immediate dialogue explaining why the State of Alaska was not provided more information about the details of the search undertaken. As to the FOIA Public Liaison Officer, our complaints are threefold: (1) the National Guard Bureau should tell us up front what searches it conducted and by what means, and with adequate specificity; (2) the process is flawed because we cannot learn about what efforts the National Guard Bureau made without filing an administrative appeal; (3) we believe there is little question that other responsive documents do indeed exist, unless destroyed because of retention protocols. We would request that the FOIA public liaison officer respond to each of these concerns.

Please provide adequate and detailed information about the search for documents. We will rely on the information you provide to determine whether the National Guard Bureau did indeed undertake a reasonable search for records, or whether further appeal should be made. We know for a fact that a large number of responsive documents did indeed exist at one time, and the failure to provide even one such document raises a serious and substantial question about the adequacy of the search undertaken.

Thank you.

Sincerely,

CRAIG W. RICHARDS
Attorney General

By:

A handwritten signature in black ink, appearing to be "P. Putzier", written over a horizontal line.

Peter Putzier
Senior Assistant Attorney General

PKP/tla
Enclosures

cc: via email w/o encls.

Jennier Nikolaisen (*NGG.FOIA@mail.mil*)

FOIA Public Liaison Officer (*af.foia@pentagon.af.mil*)